S. Bij 5/53

1953. **File No.** 53

K

Legal **DEPARTMENT**

Examined E **BRANCH**

Subject:— Suits - Bijapur

Civil Suit No. 21 of 1952

Vekatesh Shrinivas Deshpande - - - - Plff

v/s

The State of Bombay and another - - - - Deft

Re: For a declaration that a clause alleged to have been unauthorisedly added to the agreement in form F. (1) signed by him, under which he is required to obtain the permission of the Collector for sale of the suit lands, was null and void (2) for a declaration that orders ~~passed~~ contained in G. R. L. D. No. 4119/49 dated 22nd Jan. 1951 and order passed by the Collector on 14th May 1951 refusing permission to the plff. to sell the suit lands are ultra vires the power of the Govt. and the Collector.

485

File No. S. Bij 5/53

Bld. Books.Slip 24-B

5/53

In the Court of the Civil Judge, Senior Division,

Bijapur.

....

Vyankatesh Shrinivas Deshpande,
Brahmin. age 36. occupation....
agriculture and pleader, residence
Indi, District Bijapur. Plaintiff.

Vs.

1. The State of Bombay,
2. The Collector of Bijapur. Defendants.

Claim for Court fee Rs. 400/-

Claim for jurisdiction Rs. 10500/-

Herein the plaintiff begs to state as follows:-

1. That the plaintiff is a Paragana Watandar of Indi District Bijapur. He applied to the Collector of Bijapur on 3-11-1948 to have

Village.	S.No.	Assessment.
Agarkhed. Taluka Indi.	27	
-do-	28	
Nagthan Taluka Bijapur.	258/2	
-do-	259	
-do-	262	

converted into Rayatwari lands. It was mentioned in that application that these lands were to be sold to the protected tenants of the lands or to the genuine agriculturists in pursuance of the provisions of the B.T. & A.L. Act of 1948. This action was contemplated with a view to meet the Grow More Food campaign started by the Union Govt. and supported and implimented by the Provincial Govt. of the State of Bombay. After due and careful and mature inquiry, the Collector of Bijapur was pleased to order

conversion of the lands as prayed for in their application by his Order No. W.M.S. 1949 dated 15-1-1949. That order was duly communicated to the plff in due course.

2. In pursuance of that order an agreement in the form F(1) under the Land Revenue Code was duly signed by the plaintiff before the Mamlatdar of Indi and it was duly authenticated by the village officers concerned. But a clause about the inalienability of the said lands without the previous consent of the Collector was unauthorisedly added to the agreement embodied in the F(1) in the margin. The plaintiff signed that agreement in the belief that it was a part of the order of the Collector. As this clause has been added in excess of the terms and conditions of the order of the Collector No. W.M.S. 1949 dated 15-1-1949, it is null and void and not binding on the plaintiff. In pursuance of the order of the Collector No. W.M.S. 1949 dated 15-1-49 necessary and requisite entries were made in the record of rights of the respective villages in village form No. VI. When the plff signed the above form, he agreed to the condition of new and impartible tenure without occupancy price.

3. The plaintiff then applied to the Collector on 1-2-1949 for permission to sell the suit lands being under the impression and belief that he is bound by the clause unauthorisedly added to the agreement embodied in Form F(1). The said application was pending before the Collector of Bijapur for a long time.

4. At the time the application seeking permission to sell the suit lands was presented to the Collector G.R.R.D. No. 9712/28 of 4-5-39 and G.R.R.D. No. 4123/45 of 15-7-48 had been issued for the guidance of the Collector in the matter of granting permission to sell. Unfortunately there was a great delay on the part of the Collector in considering the application and in the meanwhile G.R.R.D.Nos. 4119/49 dated 7-8-50 and

G.R.R.D.No. 4119/49 dated 22-1-51 in amplification of the same were issued and the Collectors were given directions that the permission should be granted subject to the condition that the holder should pay to Govt. 50% of the sale proceeds minus the occupancy price if any. Thereafter the Collector of Bijapur sanctioned the permission to sell the suit lands on 23-2-51 provided the plff agreed to pay 50% of the sale proceeds to the Govt. The plff having refused to accept the condition, the Collector finally refused permission to sell the suit lands on 14-3-1951.

5. The plaintiff contends that the Collector having granted permission to convert the lands in suit without imposing the condition that the plaintiff was to pay 50% of the sale proceeds had no right to impose that condition when the plaintiff applied for permission to sell the same in pursuance of the amplification order of the G.R.R.D. No. 4119/49 of 22-1-51. The order of refusal is bad on this ground.

6. The plaintiff also contends that the clause unauthorisdedly added to the agreement embodied in form F(1) in excess of the terms and conditions of the order of the Collector in W.M.S. 1949 of 15-1-49 is not binding on him. Even assuming that, that clause is binding on plaintiff the plaintiff further contends that the Government of Bombay and the Collector acted in excess of their rights under that contract by impos--ing unreasonable and unconscionable condition which are expropriatory in their nature and character in pursuance of the amplification order of the G.R.R.D. No. 4119/49 dated 22-1-51.

7. As the permission to sell the suit lands was refused by the Collector on 14-3-1951 the plaintiff submitted a memorandum or petition to the Government

of Bombay on 5-4-1951 but he received a reply dated 12-5-1951 being No. 8080/49/39557B from the Secretary to the Govt. of Bombay Revenue Department stating that Govt. sees no reason to interfere with the order of the Collector of Bijapur in this matter.

8. Thereupon, the plaintiff filed an appeal being No. B.R.T. 5681/51 to the Bombay Revenue Tribunal at Bombay against the order of the Government, dated 17-5-51. But the said appeal was summarily dismissed by the Revenue Tribunal by its order No. 1068 of 1951 dated 31st July 1951 holding that it had no jurisdiction.

9. Thereafter being aggrieved by the order of the Collector dated 14-3-51 that the Govt. of Bombay Revenue Department No. 8080/49/39357 B dated 12-5-51 and that of the Bombay Revenue Tribunal No. 1668 of 1951 dated 31st July 1951 and by the amplification order of the G.R.R.D. No. 4119/49 dated 22-1-51 the plaintiff preferred an application C.A.No. 1396/51 under the Article 226 of the Constitution of India - - to the High Court of Judicature at Bombay on 7-9-1951. But the High Court of Judicature at Bombay refused on 10-12-51 to interfere with the order of the Collector. or the Govt. of Bombay under Article 226 of the Constitution of India by a prerogative writ as in its opinion the question involved in the Civil Application 1396/51 is one of the interpretation of the contractual rights between the plaintiff and the defendants.

10. The plaintiff is therefore constrained to file this suit for a declaration that the clause requiring the plaintiff to take permission of the Collector for the sale of the suit lands is null and void and not binding upon the plaintiff as it is added in excess of the terms and conditions of the order of the Collector No. W.M.S. 1949 of 15-1-49 and that the amplification order of the G.R.R.D. No. 4119/49/22-1-51 and the order

of refusal of permission to sell the lands in suit passed by the Collector of Bijapur on 14-3-1951 are ultravires of the powers of the Collector and the Government of Bombay and in the alternative for a declaration that the demand by the Collector and the Govt. of 50% of the sale proceeds are expropriatory in their nature and the Collector can only demand a part of the sale price in consideration of his consent.

11. The cause of action arose when the Collector refused permission to sell the suit lands i.e. on 14-3-1951 within the jurisdiction of this Court.

12. The plaintiff is the resident of Indi, taluka place within the jurisdiction of this Court. The cause or action arose within the jurisdiction of this Court. Hence this Court has jurisdiction to try this suit.

13. The Court fee is paid on Rs. 400/- the value set down for the purpose of this for the declaration prayed in para 14 of the plaint. For the purpose of Court's jurisdiction, the valuation is Rs. 10500/-.

14. Notice as required by section 80 of the Civil procedure Code has been given to the Collector of Bijapur as also to the State of Bombay and delivered to them as required by law.

15. Plaintiff prays:-

(1). For a declaration that the clause in form No. F(1)-requiring the plaintiff to take permission of the Collector for the sale of the suit lands is null and void and not binding on the plaintiff as it is added unauthorisedly in excess of the terms and conditions of the order of the Collector No. W.M.S. 1949 dated 15-1-1949 and that the amplification order of the G.R.D.No. 4119/49 dated 22-1-1951 and the order of the

refusal of permission to sell the lands in suit passed by the Collector of Bijapur on 14-3-51 in pursuance of the said amplification order are ultra-vires of the powers of the Collector and the Government of Bombay.

(2) In the alternative, if it is held that consent of the Collector is necessary for any reasons, it should be declared that that order of the Collector demanding 50% of the sale price is arbitrary and expro-priatory in its nature and that the Collector and the Government can only demand a nominal part of the sale price in consideration of the consent.

(3) For the costs of the suit.

(4) Any other equitable relief, the Court finds plff entitled to.

Bijapur. Sd/- C.S.Deshpande.

dated 1st June 1952.

I, Venkatesh Shrinivas Deshpande of Indi, the abovementioned plaintiff hereby verify that the contents of paras 1 to 15 of the plaint are true to my knowledge and belief.

Dated 1st June 1952. Sd. V.S.Deshpande.

Bijapur C.S. No. 21/1952

Plaintiff has filed this suit against the State of Bombay and the Collector of Bijapur (1) for a declaration that a clause alleged to have been unauthorisedly added to the agreement in Form F(1) signed by him, under which he is req ired to obtain the permission of the Collector for sale of the suit lands, was null and void (2) for a declaration that orders contained in G.R. R.D. No.4119/49 dated 22.1.51 and order passed by the Collector on 14.3.51 refusing permission to the plaintiff to sell the suit lands are ultra vires the power of the Government and the Collector.

2. Defence of this suit may be sanctioned on the lines of the accompanying brief.

MMC
24/1/53

Solicitor) 23/1

× Secretary R.D 23/1

× M. 1539/E
dl. 23-1-53.

9

IN THE COURT OF THE CIVIL JUDGE, Sr.Dn.

AT BIJAPUR.

Special Civil Suit No.21 of 1952.

1. Venkatesh Shriniwas Deshpande. plff.

Vs.

1. The State of Bombay.
2. The Collector of Bijapur. defts.

Herein the written-statement of defts Nos 1 and 2 is as follows:-

1. The plff submitted an application to the Collector on 3-11-1948 for converting the suit lands t Khalsa or unalienated lands. The plff relinquished the lands by giving notice to the Mamlatdars on 22-11-1948 which was to have effect from the close of that year. T Plff's statement was recorded on 22-11-1948 and thereb the plff consented to take the lands on new and impartible tenture and prayed for converting the suit lands into Khalasa lands and to regrant them to him. On 15-1-1949 in persuance of instructions issued to th Collectors for disposal of such cases in G.R.R.D.No. 9712/28 of 4-5-1939 as modified by G.R.R.D.No.4123/45 of 15-7-1948 the Collector passed an order regranting the said lands to the plff as unalienated unoccupied lands on new or resticted and impartible tenure withou charging any occupancy price but subject to the payment of full assessment. When lands were thus regranted on ne or restricted tenure the condition of inalienability with out the permission of the Collector was essentiall and automatically attached to it and thus the form prescribed under Rule 37(3 and 4) of the Rules for such agreement is Form FI after incorporating therein the said clause. The addition of the clause was thus not unauthorised. It was quite legal and valid. The allegations in Paras 1 of the plaint which are inconsistent with or contrary to what is stated abov are denied.

2. The order of the Collector was ~~duly~~ duly communicated to the plff and he was supplied with a copy thereof. The plff signed and executed an agreement as per Collector's order read with the aforesaid G.Rs and Rule 37(4) in Form F(I) on 27-1-1949 with the clause in question. The plff voluntarily and willingly signed the said agreement after ~~satisfied~~ satisfying himself that it was in persuance of the Collector's order. The plff consented to the said terms and executed the agreement, and he cannot repudiate the same now. The plff's allegations in Paras 2 and 3 and 6 and 10 of the plaint that the clause was unauthorisedly added to the agreement, that the addition is in excess of the terms and conditions of the order of the Collector and that it is null and void and not binding on the plff are not correct and are denied. The plff is estopped by his conduct from raising any such contention.

3. The plff applied on 1-2-1949 to the Collector for permission to sell. The enquiry had to be made by Mamlatdars of two different Talukas and therefore there was some unavoidable delay. When the application for permission was submitted by the plff such cases of permission were governed by G.R.R.D.No.~~3207~~11/33 III of 26-8-1947 under which the cases were to be submitted to the Government. While granting such permission under the G.R., Government considered several points including the one whether or not it should share the sale price with alienor. The Collector submitted the case to the Government on 31-11-1950. Before the case was disposed of, G.R.R.D.No.4119/49 of 22-1-1951 had been issued. In view of this, the Govt. directed the Collector to dispose of the plff's application in accordance with the above G.R. The plff's application could only be disposed of according to the directions of the Govt. operative at the date of disposal of the application. The Collector acted in terms of this G.R. The plff refused to abide by the conditions laid down in the said G.R. with the result the Collector

refused the permission applied for by the plff.

4. The allegations and contentions of the plff in paras 5 and 6 and 11 of the Plaint are not correct and are denied.

5. The transfer of the lands held on new tenure by the plff could not according to the terms of the agreement ~~by~~ be made save with the consent or permission of the Collector which could be granted by the Collector by virtue of terms and conditions of the grant itself. In granting the consent or permission the Collector is bound by the instructions issued by the Govt. It was quit lawful for Govt. to impose such conditions as are laid down in G.R.R.D.No.4119/49 of 22-1-1951. These conditions are not unreasonable and unconscionable as contended by the plff. The said conditions are quite legal and proper and it was within the powers of Government and Collector to impose such conditions.

6. The clause in question is not added in excess of the terms and conditions of the order of the Collecto The G.R. of 22-1-1951 and the order of refusal of persmission to sell passed by the Collector on 14-3-1951 are not ultra vires of the powers of Collector and of th Govt. ~~The demand of Collector and of the Govt.~~ The demand of 50% of the sale proceeds is not expropriatory nor arbitrary in its nature. The allegations to the contrary as made in Para 10 and 15 of the Plaint and th allegation therein to the effect that the Collector can only demand less than 50% of the sale price or nominal part of sale price are not correct.

7. The clause in question is legal and valid and is binding on the plff. It was ~~not~~ added unauthorisdly no in excess of the terms and conditions of the order of t Collector. The G.R. of 22-1-1951 and Collector's order of 14-3-1951 refusing permission are intra vires of the powers of the Collector and the Government.

8. The plff is not entitled to any of the reliefs prayed for by him.

It is therefore submitted that the plff's suit be dismissed with costs.

District Government Pleader,
Bijapur.

I, A.C.Angadi, District Government Pleader, Bijapur, hereby declare that what is stated in paras 1 to 8 above is true on information received and believed to be true. Signed at Bijapur on _____.

District Government Pleader,Bijapur.

13

No. 282 of 1953.
Date:- 6-2-1953.

To

The Collector of Bijapur.

Subject:-Bijapur Civil Suits Nos. 21 and of 1952.
1.Venkatesh Shriniwas Deshpande.
Vs.
1. The State of Bombay.
2. The Collector of Bijapur.

Sir,

In the above two suits there is a reference in the plaints and in our proposed Written-statements to the following Government Resolutions:-

1. G.R.R.D.No.4123/45 of 15-7-1948.
2. G.R.R.D.No. 9712/28 of 4-5-1939.
3. G.R.R.D.No. 7907/33III of 26-8-1947.
4. G.R.R.D.No. 4119/49 of 22-1-1951.
5. G.R.R.D.No. 4119/49 of 22-1-1950.

I request you to send me the copies of these Government Resolutions certified to be true copies.

2. Further in Suit No.21 of 1952 the plaintiff V.S.Deshpande has also signed an agreement in form F(I) about taking lands S.No.258/2,259,and 262 of Nagthan in Bijapur Taluka.The agreement is not amongst the papers received by me from the R.L.A. This should be secured to me by getting the same from the Mamlatdar of Bijapur taluka

3. The contentions of the Government is that the new tenure on which the Collector regranted the lands to the plff's Laxman and Ventakesh Deshpande would include conditions of personal cultivation and inalienability without their permission of the Collector.I request you that authorities if any in the form of law, rules and Government resolutions interpreting new tenure as meaning that the lands are to be personally cultivated and are to be inalienable without the permission of the Collector may please be sent to me.

Yours faithfully

Sd.A.C.Angadi.

P.T.O. District Government Pleade

No. 233 of 1953.
Date:- 6-2-1953.

Copy respectfully forwarded to the Rememrbancer of Legal Affairs, Bombay, for favour of enlightening me about the Law, Rules, and Government Resolutions inter-preting new tenure as meaning that such lands are to be personally cultivated and are to be ~~xx~~ inalienable without the permission of the Collector.

Abhyankar

District Govt. Pleader, Bijapur.

Th. S.C. Dy.
Th. No. 3388
Sub No. 10/2/53

Submitted

Pl. see D.G.P's letter at P. 1 and the draft W. Ss. for approval. Shri Chitre may deal with these as he prepares the briefs.

Pl. also see endorsement above for orders.

Sd/-
11/2

Sol (M)

15

No. 4822/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 11th March 1953.

To

The District Government Pleader,
Bijapur.

Subject:- Bijapur Civil Suits Nos.21 and 22 of 1952.
Vyankatesh Shriniwas ... Plaintiff
vs.
1. The State of Bombay and
2. The Collector of Bijapur. Defendants.

Sir,

With reference to your letter No.232 dated the 6th February 1953 to the Collector of Bijapur and copy endorsed to this office under your No.233 dated 6-2-53, I have the honour to state as follows:-

The Government resolution referred to in para 1 of your letter may be obtained from the Collector. The agreement in Form P(I) executed by Shri V.S. Deshpande may be obtained from the Mamlatdar of Bijapur taluka.

As regards para. 3 of your letter it may be explained that the condition of personal cultivation is necessarily involved when the land is held under the new tenure. The land held under such tenure is inalienable. It would, therefore, follow that it cannot be let out to a tenant. A lease is a transfer of the land. If the land is cultivated by any lessee under a lease it would mean that the land has been alienated by the occupant under the new tenure. Therefore if the occupant under the new tenure ceased to cultivate the land personally it would mean that he has alienated the land in favour of a tenant for cultivation. In that case the land can be forfeited for breach of condition under section 73A of the Land Revenue Code.

Your attention is also requested to rule 37 clauses (1) to (5) of the Land Revenue Rules. A copy of resolutio

No....

No.6881/49 dated the 22nd August 1951 is also sent herewith for your information.

Yours faithfully,

for Remembrancer of Legal Affairs.

RHS.
11.3.

Issued
11/3

Suits :

Bijapur.

For a declaration that a clause alleged to have been unauthorisedly added to the agreement in Form F (1) signed by him, under which he is required to obtain the permission of the Collector for sale of the suit lands, was null and void, (2) for a declaration that orders contained in G. R., R. D., No. 4119/49, dated 22nd January 1951, and order passed by the Collector on 14th March 1951, refusing permission to the plaintiff to sell the suit lands are *ultra vires* the power of the Government and the Collector.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 10515/E.

Bombay Castle, 5th May 1953.

Letter from the Collector of Bijapur, No. L.A.W. 209, dated the 31st July 1952—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
CIVIL SUIT No. 21 OF 1952.
Venkatesh Shrinivas Deshpande ... ... — Plaintiff;
versus
The State of Bombay and another ... ... Defendants.

Memorandum to the District Government Pleader, Bijapur, No. 1631/E, dated the 24th January 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

R Dhurandhar

Original for { J. R. DHURANDHAR,
Secretary to Government.

G. R., No. 10515/E, L. D., dated the 5th May 1953.

To

The Revenue Department.
The Collector of Bijapur.*
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1953.

Copy forwarded for information and guidance to

Subhol: after issue
File no. S. Bijapur —/53 (Civil)
20/8/53
S. S. 20/8

19 455

BIJAPUR CIVIL SUIT No. 21/1952.

Chronological Statement of Facts.

Plaintiff has filed this suit against the State of Bombay and the Collector of Bijapur (1) for a declaration that a clause alleged to have been unauthorisedly added to the agreement in Form F(1) signed by him, under which he is required to obtain the permission of the Collector for sale of the suit lands, was null and void, (2) for a declaration that orders contained in G. R., R. D., No. 4119/49, dated 22nd January 1951, and order passed by the Collector on 14th March 1951, refusing permission to the plaintiff to sell the suit lands are *ultra vires* the power of the Government and the Collector.

2. The following lands, described in para. one of the plaint were paragana watan lands (non-service) Inam Class V:—

Village.	S. No.	Area.	Assessment.
			Rs.
Nagathan, Taluka Baijapur.	258/2	6-18	5-2-0
	259	21-21	17-0-0
-do-	262	20-15	15-0-0
		P. K. 0-1	
		20-16	
Agarkhed, Taluka Indi.	27	48-6	36-0-0
	28	33-26	23-0-0

On 3rd November 1948 the plaintiff submitted an application to the Collector for converting the said lands to Khalsa or unalienated lands. In the course of enquiry into the application a statement of the plaintiff was recorded on 22nd November 1948. The plaintiff agreed to take the relinquished Inam lands on new and impartible tenure. On 15th January 1949 the Collector passed an order regranting the said lands to the plaintiff as unalienated lands on new and imparable tenure without charging any occupancy price but subject to the payment of full assessment.

3. The plaintiff signed an agreement in Form F(1) on 27th January 1949 before the Mamlatdar of Indi. Since the relinquished lands were regranted on new (restricted and impartible tenure the following clause was included as per rule 37(3) of the Land Revenue Rules before the Plaintiff signed the agreement :—

"The said land has been granted to me subject to the condition to which I hereby assent, namely, I, my heirs, executors administrators and approved assigns may not at any time lease, mortgage, sell or otherwise, howsoever, encumber the said land or any portion thereof without the previous sanction in writing of the Collector."

4. On 1st February 1949 the plaintiff submitted an application to the Collector for permission to sell the said lands. After necessary enquiries the Mamlatdar submitted his report in the matter on 21st October 1950. There was some unavoidable delay in submitting the report due to the fact that the enquiry had to be made by the Mamlatdars of two talukas viz. Indi and Bijapur wherein the said lands are situate. When the application for permission was submitted by the plaintiff such cases of

permission for sale were governed by the G. R., R. D., No. 7907/33-III, dated the 26th August 1947. Under the said G. R. the cases were required to be submitted to the Government. While granting such permission under that G. R., Government considered several points including the one whether or not it should share the sale price with the alienor.

5. The Collector submitted the case to Government on 30th November 1950. Before the case was disposed of, Government Resolution, R. D., No. 4119/49, dated 22nd January 1951, had been issued. The said G. R. contains *inter alia*, the following directions :—

In the case of alienated lands including service Inam lands relinquished and regranted to the holder thereof on the new and impartible tenure, if holders of such lands apply for permission to sell, such permission should be granted subject to the condition that the holder should pay to Government 50 per cent. of the sale proceeds minus the occupancy price paid if any.

The Government therefore under G. M., R. D., No. 8089/49/107907B, dated 27th January 1951, directed the Collector to dispose of the plaintiff's application for permission to sell the said lands in accordance with orders contained in G. R., R. D., No. 4419/49, dated 22nd January 1951.

6. The plaintiff was informed of the order and his statement was recorded on 23rd February 1951. He refused to abide by the conditions laid down in G. R., R. D., No. 4119/49, dated 22nd January 1951, on the ground that at the date of his application the said G. R. was not in existence and he would not have applied for permission had the G. R. been in operation. Therefore on 14th March 1951 the Collector refused the permission applied for by the plaintiff.

7. Plaintiff submitted an application to Government on 5th April 1951 against the order of the Collector; but it was rejected by the Government on 12th March 1951. An appeal filed by him to the B. R. T. was also summarily dismissed by the B. R. T. on 31st July 1951.

8. Plaintiff preferred Civil Application No. 1396/51 to the High Court of Judicature at Bombay under Article 226 of the Constitution of India. The High Court dismissed the application on 10th December 1951 refusing to interfere with the order passed by the Collector or Government by a prerogative writ as the question involved in the application was one of interpretation of the contractual rights between the plaintiff and the defendants.

9. The plaintiff gave a notice of suit on 21st January 1952 and filed this suit on 1st June 1952.

10. Plaintiff's contention are briefly stated below :—

(1) That the clause about the inalienability of the said lands was unauthorisedly added to the agreement signed by him since it was in excess of the terms and conditions contained in the order dated 15th January 1949 passed by the Collector. The said clause is thus void and not binding on the plaintiff.

(2) Even assuming that the plaintiff is bound by the said clause, the Government of Bombay and the Collector acted in excess of their rights under that

contract by imposing an unconscionable condition whereunder the plaintiff was required to pay 50 per cent. of the sale proceeds to Government.

(3) The Collector had not imposed any condition while granting permission to convert the said lands to Khalsa lands, to the effect that the plaintiff would be required to pay 50 per cent. of the sale proceeds to Government. The Collector has, therefore no right to impose such condition while granting permission to the plaintiff for sale of the said lands.

1. Plaintiff prays—

(1) for a declaration that the clause in the agreement in Form F(1) requiring the plaintiff to obtain permission of the Collector for the sale of the suit lands is null and void and not binding on the plaintiff as it is added unauthorisedly in excess of the terms and conditions of the order passed by the Collector on 15th January 1949.

(2) That the amplification order contained in G. R., R. D., No. 4119/49, dated 22nd January 1951, and the order of the refusal of permission to sell the suit lands, passed by the Collector on 14th March 1951 in pursuance of the aforesaid G. R., are *ultra vires* of the powers of Government and the Collector respectively.

(3) That, alternatively, if for any reasons it is considered that the Collector's consent is necessary, it should be declared that the order of the Collector demanding 50 per cent. of the sale price is arbitrary and expropriatory in its nature and that the Collector and the Government can only demand a nominal part of the sale price in consideration of the consent.

(4) For costs.

Grounds of Defence.

The first contention of the plaintiff is that the clause regarding inalienability without permission of the Collector was unauthorisedly added to the agreement in Form F1 signed by him and that the addition of the said clause to the agreement was in excess of the terms and conditions contained in Collector's order passed on 15th January 1949, and therefore the said clause is null and void and not binding on him. It is not disputed by the plaintiff that the said clause was in the agreement before he signed it (*vide* para. 2 of the plaint). This contention is not true. It should be denied that the said clause was either unauthorisedly added to the agreement or that it was in excess of the terms and conditions in the Collector's order dated 15th January 1949. By a reference to the Collector's order it will be seen that after the relinquishment the Collector regranted the said lands to the plaintiff as unalienated unoccupied lands on new and impartible tenure, without charging any occupancy price. When lands are thus granted on new or restricted tenure the condition of inalienability without the permission of the Collector's order is essentially and automatically attached to it. As the condition of inalienability without the Collector's permission is thus attached to the grant, the form prescribed under sub-rule 3 of Rule 37 of the Land Revenue Rules for such agreements is form F. 1, after incorporating therein the said clause. The addition of the clause was not thus unauthorised. It was quite legal and valid. In fact in order to give effect to the Collector's order granting the land on new

or restricted tenure, this was the only form in which the agreement could have been taken. A copy of the Collector's order dated 15th January 1949 was addressed to the plaintiff. Plaintiff signed the said agreement on 27th January 1949. Plaintiff has thus voluntarily and willingly signed the said agreement after being satisfied that it was in pursuance of the Collector's order. The plaintiff has consented to the said terms and executed the agreement. He cannot repudiate the same now. Subsequent conduct of the plaintiff in applying for the permission of the Collector in pursuance of the said clause in the agreement also confirms the view that the said clause was properly and legally incorporated in the said agreement in pursuance of the Collector's Order, and that the plaintiff knew and accepted the same. Plaintiff is estopped by his conduct from raising any such contention at this stage. Plaintiff could have very well refused to sign the agreement if he thought that it contained terms in excess of the Collector's Order dated 15th January 1949, a copy of which had been duly received by him previously and he had thus an opportunity to know the full implications of the Collector's order before signing the agreement. The contention of the plaintiff is not therefore tenable. It is clearly an after thought.

2. The plaintiff next avers that the agreement does not contain a clause enabling the Collector to impose the condition that the plaintiff should pay 50 per cent. of the sale proceeds. The plaintiff therefore contends that the Collector had no right to impose any such a condition at a later stage in pursuance of G. R., R. D., No. 4119/49, dated 22nd January 1951, which was not in existence when he applied for permission to sell the suit lands. The whole contention is misconceived. There were two separate kinds of applications by the plaintiff and orders passed thereon by the Collector. Plaintiff's first application dated 22nd November 1948 was for conversion of the Watan lands to Khalsa lands. In pursuance of instructions issued to the Collector for disposal of such cases in G. R., R. D., No. 9712/28, dated 2nd May 1939, as modified by G. R., R. D., No. 4123/45, dated 15th July 1948, the Collector allowed the concession and regranted the said lands to the plaintiff as unalienated, unoccupied lands on new and impartible tenure. Imposition of any conditions regarding the sale of the said lands at that stage was beyond the scope of that order on relinquishment the lands reverted to Government and the only question then was about regranting the said lands to the plaintiff. The plaintiff then applied on 1st February 1949 for permission to sell the said lands which were granted to him on new and impartible tenure. By the very nature of new or restricted tenure, the said lands were incapable of being alienated without the previous permission of the Collector. The plaintiff had also signed an agreement, to that effect. When the plaintiff's application was received the case was governed by the directions contained in G. R., R. D., No. 7907/38-III, dated 26th August 1947. It is true that the said G. R. contained no condition requiring the alienor to pay to Government 50 per cent. of the sale price. However it was necessary under the said G. R. to submit such cases to Government for orders after giving all the necessary information required to be given under the said G. R. In granting the permission the Government might among other things

consider whether the Government should or should not share the sale price with the alienor. However when the plaintiff's case was actually submitted to Government and was at disposal stage, the Government had issued a G. R., R. D., No. 4119/49, dated 22nd January 1951 in supersession of the aforesaid G. R. One of the condition stipulated in the latter G. R. for granting permission to sell was that the holder should pay to Government 50 per cent. of the sale proceeds minus the occupancy price paid, if any, by him at the time of grant of the said land. In view of the G. R., dated 22nd January 1951, the Government referred the case to the Collector for disposal according to the directions contained in the said G. R. The Collector therefore could grant permission to the plaintiff only according to the terms contained in the said G. R. Plaintiff's application could only be disposed of according to the directions of Government operative at the date of the disposal of the application. The plaintiff refused to abide by the said condition, and the Collector had then no alternative but to refuse the application of the plaintiff for permission to sell the said lands.

3. The plaintiff next contends that even assuming that the said clause in the agreement is binding on him, the Government and the Collector acted in excess of their rights under the contract by imposing an unreasonable and unconscionable condition of an expreparatory nature by G. R., R. D., No. 4119/49, dated 22nd January 1951. This is not true and should be denied. The rights and liabilities of the parties are governed by the terms and condition contained in the agreement signed by the plaintiff. The Government could impose any reasonable condition while granting permission. Section 8 of the Land Revenue Code provides that the Collector shall exercise all the powers and discharge all duties conferred or imposed on him by the Act or by any other law for the time being in force and in all matters not specifically provided by law, shall act according to the instructions of the Provincial Government. The transfer of the lands held on New Tenure by the plaintiff could not according to the terms of the agreement, be made save with the consent of the Collector. The consent of the Collector to the transfer of the said lands could be granted or withheld not by virtue of any of the powers conferred on him by the provisions of the L. R. Code but by virtue of the terms and conditions of the grant itself. Consequently in granting consent for the transfer of the said lands the Collector would be bound by the instructions issued by the Provincial Government. It was quite lawful for Government to impose such conditions as are laid down in G. R., R. D., No. 4119/49, dated 22nd January 1951. These conditions are not unreasonable and unconscionable as contended by the plaintiff. The said conditions are quite legal and proper and it was within powers of Government to impose such conditions. The Collector was therefore right in imposing the said conditions prior to granting his consent for sale of the said lands.

4. For all the above reasons it should be urged that the plaintiff's suit fails and should be dismissed with costs.

25 57

Received on 2-6-1952.
Registered on 7-6-1952.
Decided on 23-10-1953.
Duration:- 1-4-16.

In the Court of the Civil Judge(Srnior Division)

at Bijapur. Ex.41.

Special Civil Suit No. 21 of 1952.

Shri A.B.Kankanwadi. Vyankatesh Shrinivas Deshpande of Indi ... plff.

Vs.

1. The Stateof Bombay.
Shri A.C.Angadi. 2. The Collectorof Bijapur. Defendants.

Claim Rs 400/- for Court fee.
Claim Rs 10500/- for jurisdiction.

The plaintiff sues for a declaration that the Clause in form F(1) requiring the plff to take permission of the Collector for the sale of the suit lands is null and void and not binding on the plff as it is added unauthorisedly in excess of the term and conditions of the order of the Collector, dated 15-1-1949 and that the amplification order of the G.R.R.D.No.4119/49 dated 22-1-1951 and the order of the refusal of permission to sell the lands in suit passed by the Collector of Bijapur on 14-3-1951 in pursuance of the said amplification order are ultra-vires of the powers of the Collector and the Government. In the alternative he sues for a declaration that the order of the Collector demanding 50 percent of the sale price is arbitrary and ex-propriatory in its nature and that only a nominal part of the sale price would be reasonable in consideration of the consent of the Collector. He prays for his costs.

2. The plaintiff alleges that he is a Paragana Watandar and that he applied to the Collector of Bijapur on 3-11-1948 to have the lands of two villages, mentioned in para 1 of the plaint converted into Ryatwari lands. He says that the Collector of Bijapur was pleased to order conversion of those lands on 15-1-1949. He says further that in pursuance of that order an agreement in the form F(1) under the Land Revenue Code was duly signed by the plff and a clause about the

inalienability was unauthorisedly added to the agreement deed in the margin by the Mamlatdar unauthorisedly without taking the consent of the Collector. He says that the plaintiff signed that agreement deed in the belief that the Collector had made such an order. But it had not been done so by the Collector in his order of 15-1-1949. He states that he agreed only to the condition of new and impartible tenure without occupancy price and not to the condition stated in the margin. He says that he applied to the Collector on 1-2-1949 for permission to sell the suit lands under the impression that he was bound by the clause unauthorisedly added to the agreement, but the said application had been presented under G.R.No. 9712/28 and G.R.No.4123/45. He alleges further that his application remained pending for a long time and in the meanwhile G.R.No.4119/49, dated 7-8-1950 and its amplification dated 22-1-1951 came into force and that the Collector demanded 50 percent of the sale price for the required permission. The plff refused to do so and the Collector therefore did not grant permission to sell the lands on 14-3-1951. He contends that the Collector had no power to demand 50 percent of the sale price for granting the permission by applying G.R.No.4119/49 and that the order of refusal to grant permission was bad in law. He states that the condition laid down in the margin of the agreement deed was not binding on him. He in the alternative alleges that the Government of Bombay and the Collector acted in excess of their rights under the contract by imposing unreasonable and unconscionable conditions which are expropriatory in their nature and character. He states that he submitted a memorandum to the Govt, but received the reply from it against the plff. Then he appealed to the Revenue Tribunal, but got no success there also and ultimately he approached the High Court under article 226 of the constitution of India; but the latter refused to interfere with the order of the Collector or the Government. Hence the suit.

3. The defendants in their written statement at Ex.15 stated that the plff first applied to the Collector on 3-11-1948 for converting the suit lands to Khalasa ones and that the Mamlatdar recorded the plff's statement. The Collector passed an order regranting the said

lands to the plff as unalienated unoccupied lands on new or restricted and impartible tenure without charging any occupancy price but subject to the payment of full assessment. Wheh lands were thus regranted on new or restricted tenure the condition of unalienability without the permission of the Collector was essentially and authmatically attached to it and thus the form prescribed under Rule 37(3 and 4) of the Rules for such agreement was form F(1) after incorporating the said clause. The condition of the clause was not thus unauthorised, but quite legal and valid. They stated that the plff voluntarily and willingly signed the said agreement after satisfyinghimself that it was in pursuance of the Collector's order and that he consented to the said terms and executed the agreement. Thus the said agreement was not null and void, but was binding on the plff. They further stated that the plaintiff applied for permission on 1-2-1949 and time was spent in holding the inquiry in respect of the lands in two different talukas. The Collector submitted the case to the Government on 31-11-1950. Before the case was disposed of G.R.R.D.No.4119/49 had been issued and the Government directed the Collector to dispose of the plff's application in accordance with the above G.R. They stated that plff's application would only be disposed of according to the direction of the Govt. and the Collector was perfectly justified in following the directions of the G.R. which was prevailing at the time of passing the order. They stated that the condi-tions, laid down by the Collector in his order were not unreasonable and unconscionable, but they were quite legal and proper to impose such conditions. They denied the allegation that the clause in question was not added in excess of the terms and conditions of the order of the Collector. They stated that the order of the Collect-

-or

refusing permission to sell the lands were not ultra vires and that the demand of 50 percent of the sale price was not expropriatory or arbitrary in its nature. They prayed for their costs.

4. The following issues are framed at Ex.21:-

ISSUES.

(1) Whether the plff proves that he signed the agreement form F(1) through mistake thinking that the contents of the written clause might be existing in the order of the Collector ?

(2) Whether the plff proves that the inclusion of the said clause in the agreement form was unauthorised and void, in view of the order of the Collector, passed previously in this respect ?

(3) Whether the plff, in the alternative, proves that the Collector has no right to demand 50 % of the sale price and that it is not binding on the plff ?

(4) Whether the deft proves that the plff is estopped from filing the present suit ?

(5) Whether the plff is entitled to the declarations claimed ?

(6) Whatdecree ?

5. My findings:-

On issue No.1:- No.

do. No.2:- No.

do. No.3:- No; 2nd part does not survive.

do. No.4:- Not pressed.

do. No.5:- No.

do. No.6:- As per final order.

Reasons.

6. Issues Nos. 1 to 5:- The parties filed the PursisEx.36 stating that they would lead no oral evidence. This suit and the Suit No.22 of 1952 were heard as companion suits as the question involved in both of them is one and the same, though the parties and the lands are different from one another. Before dealing with the main questions, I would like to give herew a few facts which

are admitted by the parties for ready reference. The plff made an application to the Collector on 3-11-1948 to convert his Paragan Watan lands situated at two villages into Khalasa lands. The Government had the power to do so then. Notice of relinquishmentwas accordingly given on 22-11-1948 and the plff's statement wasrecorded on the same day, in pursuance of the provisions of sections 74 and 76 of the Land Revenue Code. The plff wanted to take those lands by way of regrant from the Government and they were accordingly granted to him on new and impartible tenure. At that time G.R. No.4123/45(Ex.35) was in force in respect of Paragana Watan lands and the new grant was to be made under Rule 74(3) of the Land Revenue Rules. The plff agreed to those conditions and executed the agreement deeds Exhs. 25 and 26 in form F(1), including form "I" in it. There was no law or rule to explain the word "new tenure". But it was incorporated by way of explanation in the agreement deeds in the margin. Until 1-2-1949, the plaintiff did notattach any importance to the conditions, laid down in the agreement deeds. On 1-2-1949 he applied to the Collector for permission to sell the lands, as provided in the agreement deed. The agreement had been executed as per G.R.(Ex.35) and the Collector had under it the power to permit the plff to sell the lands on some conditions. When the plff applied for such permission the Collector could not probably make out what percentage of the sale price should be demanded from the plff, for granting such a permission. He, therefore, referred the matter to the Government for getting some advice from it in the matter. Then the Government informed the Collector by Ex.31 to decide cases of the present nature by following the directions, contained in G.R. of 1951(Ex.32). The Collector then asked the plff to pay 50 percent of sale

ptice for getting the permission. The plaintiff considered the said order as unconscionable and unreasonable and appeared to the Government. But the Government considered the order of the Collector as proper and reasonable and dismissed the plff's appeal. He approached the Revenue Tribunal and the High Court, but could not get success any where. He then filed the present suit.

7. The learned pleader for the plaintiff argued the case on three aspects and I shall consider it on those three aspects separately. He first suggested that the Mamlatdar of Indi or his clerks wrote the condition in the margin of the agreement deed,(Ex.25) unauthorisedly and that the plff signed it thinking that such a condition had been inserted in the order passed by the Collector. He stated that there was no such condition in the order of the Collector and that the plff was, therefore, not bound to respect the condition which was inserted in the agreement deed. He stated that the said condition was illegal and unconscionable one. But the learned pleader for the plff should know that the plff had agreed to abide by the conditions mentioned in the Collector's order and the regrant had been made on"new and impartible" tenure. There was no law or rule to explain the said term known as "new tenure" and the Mamlatdar explained it to the plff when he took the agreement deed,Ex.25 from the plff. Thus, there is no mis-representation or wrong impression as suggested by the plaintiff. I am, therefore, of the opinion that there is no force in the contentions of the plff in this respect.

8. The learned pleader for the plff next argued that the agreement deed,Ex.25, was entered into according to the rules or directions, mentioned in G.R.No.4123/45, dated 15th July 1948, Ex.35, and that the rules or directions, laid down in theGovernment Resolutions of 1950 and 1951,Ex.51(in suit No.22 of 1952) and Ex.32 were not at all applicable in the case of the plff. The learned pleader for the plff should know that the Government Resolutions of 1948 and 1950,Exs.35 and 51 (in suit No.22 of 1952) refer only to relinquishment and regranting of the lands and that G.R.of 1951,

Ex. 32, only referred to the conditions under which the permission to sell the lands was to be granted. It is true that the Government Resolutions of 1950 and 1951 would not at all be applicable to the present case as they were issued after the suit agreement (Ex.25). But as stated above, there is nothing in the G.R. of 1948, Ex.35, which was in force at the time of the execution of the agreement deed, about the conditions that were to be observed by the plaintiff, if he desired to obtain the permission to sell the lands, which were regranted to him. Under G.R. Ex.35, the Collector had full power and discretion to grant permission under Rule 74(b) of the Land Revenue Rules to any person by imposing conditions, which he thought fit. The Collector instead of exercising his own discretion, for imposing the condition for granting the permission to sell the lands, referred the matter to the Government and sought some advice or directions from it. But in the meanwhile, the G.R. of 1951, (Ex.32) had come into force and the Government, therefore, directed the Collector of Bijapur to observe those directions and pass the orders in the cases similar to those of the plffs (in both the suits), before granting the permission to sell the lands. It cannot be denied that the Collector could not question the Government why such Government Resolutions were passed and that he had no other alternati-ve, but to observe the directions contained in the Govt.Resolutions. The Collector could have exercised his own discretion as per Ex.35 in the same manner as stated in the G.R.Ex.32, and the plff may, therefore, treat the Collector's orders passed in his case as one, done according to his (Collector's discretion. The plff has no right to question the Collector why the latter observed the directions, laid down in the G.R. of 1951 (Ex.32), though it had been issued subsequent to the date of the agreement(Exh.25) or application(Ex.29). Thus, I hold

that the Collector had full power to demand 50 percent of the sale proceeds from the plffs in both the suits before granting the permission to alienate the properties.

9. Next, the learned pleader for the plaintiff argued that the Collector's discretion to demand 50 percent of the sale proceeds for granting the permission to sell the lands was unconscionable, improper and expropriatory. But I shall have to see first if the Collector had or had not the discretion to demand 50 percent of the sale proceeds before granting the permission. The plff had agreed to obtain the permission from the Collector before intending to sell the property in the agreement deed itself. As per G.R. of 1948 (Ex.35), the Collector had the discretion to grant permission under Rule 84(b) of the Land Revenue Rules to any one by imposing any condition he considered fit. If the Collector referredto the G.R.Ex.32 for his own guidance, to exercise the discretion, no one can question him why he did so. It is not an illegality if he refers to the said G.R.Ex.32. The learned pleader for the plff, however, referred to G.R. of 1953, (Ex.43) and argued that the Government itself had considered the conditions laid down in G.R.Ex.32 as unconscionable and had therefore amended those conditions in the recent G.R. and that the Court coulddeclare in the suit that the conditions imposed on the plff by following directions contained in G.R.Ex.32 were illegal and unconscionable. I am notmuch concerned to know what necessitated the Government to pass the G.R. in the year 1953 and why the Government reduced the percentage of the sale proceeds to be demanded from the persons, who were holding the lands on new tenure and who were intending to sell those properties. But at this stage I am only to see if the conditions imposed on the plff by the Collector for granting the permission to sell the lands were unconscionable and unreasonable and if the Civil Court had the jurisdiction or right to declare so. The plff desires in this suit indirectly that I should cancel the G.R. of the Government(Ex.32) and give the declaration to him. But I am of opinion that the Civil Court had no got any such right. The proper course for the plff was to approach the Collector with a fresh application requesting

himtotake some less percentage of sale proceeds in view of the recent G.R. Ex.46 and to grant the permission. I thus hold that the present suit is not at all tenable. For these reasons, I record my findings on all the issues in the light of the above observations and pass the following order. The learned Govt.pleader did not press for issue No.4.

ORDER.

Plaintiff's suit stands dismissed. The plaintiff do pay the costs of the defendants Nos. 1 and 2 in one set and bear his own.

Sd.M.H.Kazi.

23rd October 1953. Civil Judge(Sr.Dn.).

Read. with O.S.P.'s No. 1411 of 12-11-53)

35 74-

Decree.

In the Court of the Civil Judge, Sr, Dn, Bijapur.

Special Civil Suit No.21 of 1952.

Vyankatesh Shrinivas Deshpande,

Brahmin, age 36, occupation Agricultural

Pleader, Residence Indi, Dist, Bijapur. Plaintiff.

Vs.

1. The State of Bombay.

2, The Collector of Bijapur. . ... Defendants.

Suit filed on 2-6-1952.

Suit registered on ,7-6-1952.

Claim for Court fee Rs.400/-

Claim for jurisdiction, ... Rs.10500/-.

Herein the plaintiff begs to state as follows :-

1. That the plff is the pargana Watandar of Indi Dist, Bijapur He applied to the Collector of Bijapur on 3-11-48 to have

Village	S.No.	Assessment.
Agarkhed tal. Indi.	27	
do	28	
Nagthan tal, Bijapur.	258/2	
do	259	
do	262	

converted into Rayat ari lands. It was mentioned in that that these application that these lands were to be sold to the protected tenants of the lands or to the genuine agriculturist in pursuance of the provisions of the B.T. & L.A. Act of 1948. This action was contemplated with a view to meet the Grow more Food Campaign started by the Union Govt. and supported and implimented by the Provincial Govt. of the State of Bombay. After due and careful nature inquiry, the Collector of Bijapur was pleased to order conversion of the lands as prayed for in their application by his order No: W.W.S.1949 dated 16-1-49. That order was duly communicated to the plaintiff in due course.

2. In pursuance of that order an agreement in the Form F(1) under the land Revenue Code was duly signed by the plff

before the Mamlatdar of Irdi and it was duly authenticated by the village officers concerned. But a clause xxxxx about the inalienability of the said lands without the previous consent of the Collector was unauthorisedly added xxxxxxxx to the agreement embodied in Form F(1) in the margin. The plff signed the agreement in the belief that it was a part of the xx order of the Collector. As this clause has been added in Excess of the terms and conditions of the order of the Collector No.W.M.S.1949 dated 15-1-1949, it is null and void and not xxxxx binding on the plff. In pursuance of the order of the Collector No.W.M.S.1949 dated 15-1-1949 necessary and requisite entries xx were made in the record of rights of the respective villages in village form No.VI. When the plff signed the above form, he agreed to the condition of new and impartible tenure without occupancy price.

3. The plff then applied to the Collector on 1-2-49 for xxxxx permission to sell the suit lands being under the impression and belief that he is bound by the clause unauthorisedly added to the agreement embodied in Form F(1). The said application was pending before the Collector of Bijapur for a long time.

4. At that time the application seeking permission to sell the suit lands was presented to the Collector G.R.R.D.No.9712/28 of 4-5-1939 and G.R.R.D. No.4123/45 of 15-7-48 had been issued for the guidance of the Collector in the matter of granting permission to sell. Unfortunately there was a great delay on the part of the Collector in considering the application and in the meanwhile G.R.R.D.Nos.4119/49 dated 7-8-1950 and G.R.R.D. No. 4119/49 dated 22-11-51 in implifiction of the same were issued and the Collectors were given directions that the permission should be granted subject to the condition that the holder should pay to Govt. 50 % of the sale proceeds minus the occupancy price if any. Thereafter the Collector of Bijapur sanctioned the xxxxxxx permission to sell the suit lands on 23.2.51 provided that the plff agreed to pay 50 % of the sale proceeds to the Govt. The plff having refused to accept the condition to sell the suit lands xxxxxxxxxxx the Collector finally refused permission to sell the suit lands on 14-3-1951.

5. The plaintiff contends that the Collector having granted

permission to convert the lands in suit without imposing the condition that the plff was to pay 50 @ % of the sale - proceeds had no right to impose that condition when the plff applied for permission to sell the same in pursuance of the implification order of the G.R.R.D. No.4119/49 of 22-1-51. The order of refusal is bad on this ground.

6. The plff also contends that the clause unauthorisedly added, to the agreement embodied in form F(1) in excess of the terms and conditions of the order of the Collector in W.M.S. 1949 of 16-1-1949 is not binding on him. Even assuming that, that clause is binding on plff the plff further contends that the Government of Bombay and the Collector acted in excess of their rights under that contract by imposing unreasonable and unconscionable condition which are expropriatory in their nature and character in pursuance of the implification order of the G.R.R.D. 4119/49 dated 22-1-51.

7. As the permision to sell the suit lands was refused by the Collector on 14-3-1951 the plaintiff submitted a - memorandum or petition to the Government of Bombay on 5-4-51 but he received a reply dated 12-5-1951 being No.3030/49/39557 from the Secretary to the Government of Bombay revenue - department stating that Govt.sees no reason to interfere with the orders of the collector of Bijapur in the matter.

8. Thereupon, the plff filed an appeal being No.B.R.T.5681/51 to the Bombay Revenue Tribunal at Bombay against, the order of Govt. dated 12-5-51. But the said appeal was summarily dismissed by the Revenue Tribunal by its order No.1068 of 1951 dated - 31st July 1951 holding that it had no jurisdiction.

9. Thereupon being aggrieved by the order of the Collector dated 14-3-51 that ~~xxx~~ of the ~~X~~ Govt. of Bombay Revenue department No.3030/49/39557B dated 12-5-51 and that of the Bombay Revenue Tribunal No. 1662 of 1951 dated 31st July 1951 and by the - implification order of the G.R.R.D.No.4119/49 dated 22-1-51 the plff preferred an application C.A.No.1366 of 51 under the article 226 of the constitution of India to the High Court of Judicature at Bombay on 7-9-1951. But the High Court of Judicature at Bombay refused on 1 -12-51- to interfere with the order of the Collector or Govt. of Bombay under article 226 of the

Constitution of India by a prerogative writ as in its opinion the question involved in the Civil Application 1396/51 is one of the interpretation of the contractual rights between the plaintiff and defendants.

10. The plff therefore is constrained to file this suit for a declaration that the clause requiring the plff to take permission of the Collector for the sale of the suit lands is null and void and not binding upon the plff as it is added in excess of the terms and conditions of the order of the Collector No.W.M.S.1949 of 15-1-1949 and that the implification order of the G.R.R.D. 4119/49/221-51 and the order of refusal of permission to sell the lands is suit passed by the Collector of ~~Kxxja~~ Bijapur on 14-3-51- are untra-vires of the powers of the Collector and the Govt. of Bombay and in the alternative for a declaration that the demand by the Collector and the Government of 50 % of the sale proceedings are expropriatory in their nature and the ~~Kxxxxxxxx~~ Collector can only demand a part of the sale price in consideration of his consent.

11-. The cause of action arose when the Collector refused permission to sell the suit lands i.e.on 14-3-1951 within the jurisdiction of this Court.

12. The plff is the resident of India a taluka place within the jurisdiction of this Court. The cause of action arose within the jurisdiction of this Court. Hence this Court has jurisdiction to try this suit.

13. The Court fee is paid on Rs.400/- the ~~xx~~ value of the set down for the purpose of this for the declaration prayed in para 14 of the plaint.

For the purpose of Court's jurisdiction, the valuation is Rs.10500/-.

14. Notice as required by section 80 of the Civil Procedure Code has been issued to the Collector of Bijapur as also to the State of Bombay and delivered to them as required by law.

15. Plaintiff prays :-

1. For a declaration that the clause in form F(1) requiring the plff to take permission of the Collector for the sale of the suit lands is null and void and not binding on the plff as it is added unauthorisedly in excess of the term and conditions of the order of the Collector, No.W.M.S.1949 dated 15-1-49 and that the implification order of the

C.R.R.D. 4119/49 dated 22-1-61 and the order of the refusal of ormission to sell the lands in suit passed by the Collector of Bijapur on 14-3-61 in pursuan e of the said impliflie.tion order are ultravires of the powers of the Collector and the Govt. of Bombay.

2. In the alterhative, if it is held that consent of the Collector is necessary for a y reasons, it should be declared that that of the Collector demanding 50 % of the sale price is arbitrary and expropriatory in its ature and that the Collector and the Govt can only demand a nominal ~~prign~~ part of the sale price in in consideratio. of the consent.

3. For th costs of th suit.

4. Any other equitable relief, the Court finds plaintiff ent tled to.

The suit coming for final disposal before Shri M.H.Kazi, Civil Judge, Sr.Dn., this 23rd day of octo er 1953 in the presence of Shri A.B.Kankanwadi pleader for the plaintiff and Shri A.C.Angadi pleader for the defendants it is ordered :-

Plaintiff's suit stands dismissed . The plaintiff do pay the costs of defendants 1 and 2 in one set and bear h's own.

Bill of costs.

For plaintiff.		For defendants.	
1.Stamps for plaint.	37-8-0.	1.For applications Exhs, 9,10,11,12,13,14,23, 37,44.	5-0-0.
2. " for vakalatnama.	0-10-0.	Pleader's fee.	368-12-0.
3.For applications, exhs.17-41. Process fee	1-4-0.	Total	373-12-0.
4.Pleader's fee	368-12-0.	Costs disallowed on exhs,9,10,11,12,13,14, 23,37,and 44.	5-0-0.
Total.	420-10-0.	Total	368-12-0.
Costs disallowed on, exhs,17,14.	1-4-0.		
Total	419-6-0.		

26/11/53

Given under my hand and the seal of the Court this 23rd day of october 53.

Clerk.

Pleader for plff.

Pleader for defts,

Sd/- M.H. Kazi

Civil Judge, Sr.Dn.,
Bijapur.

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Suits:
Bijapur.
For a declaration that a clause alleged to have been unauthorisedly added to the agreement in Form F (1) signed by him, under which he is required to obtain the permission of the Collaction for sale of the suit lands, was null and void, (2) for a declaration that orders contained in G.R., R.D., No. 4119/49, dated 22nd January 1951, and order passed by the Collector on 14th March 1951, refusing permission to the plaintiff to sell the suit lands are ultra vires the power of the Government and the Collector.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 26450/E
Bombay Castle, 31st December 1953.

Read Government Resolution, Legal Department No. 10515/E dated the 5th May 1953.

Letter from the District Government Pleader, Bijapur No. 1416, dated 23rd October 1953, stating that the suit noted in the margin was decided by the Civil Judge (S.D.) Bijapur on the 23rd October 1953 when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Bijapur.
Civil Suit No. 21 of 1952.
Venkatesh Shrinivas Deshpande — Plaintiff.
versus
The State of Bombay and an-other — Defendants.

"Plaintiff's suit stands dismissed. The plaintiff do pay the costs of the defendants Nos. 1 and 2 in one set and bear his own."

Letter from the District Government Pleader, Bijapur No. 1429, dated the 27th October 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the
Governor of Bombay,

(R.T.Katarki)
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur.
The District Government Pleader, Bijapur.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY. 43

FIRST APPEAL NO.605 OF 1953.

Vyanktesh - Shriniwas Deshpande of Indi. ... Appellant.
(Orig.Plaintiff.

Versus.

1. The State of Bombay.
2. The Collector of Bijapur. ... ... Respondents.
(Orig. defendants.)

Claim Rs.400/- for Court Fees.
" Rs.10500/- for Jurisdiction.

The Appellant above-named begs to appeal against the decree of the Civil Judge, Senior Division, in Special Civil Suit No.21 of 1952, dated the 23rd October 1953 on the following among other grounds:-

(1). The decision of the Lower Court is contrary to law and against the weight of evidence in the case.

(2). The Lower Court erred in dismissing the plaintiff's suit with costs.

(3) I It should have been held that the plaintiff had proved that he signed the agreement form (F(1) through mistake thinking the contents of the written clause therein might be existing in th order of the Collector.

(4) It should have been held that the plaintiff had proved that the inclusion of the said written clause in the said agreemen form was unauthorised and void in view of the order of the Collect passed preveiously in that connection.

(5). It should have been held that the said clause was insert in excess of the terms and conditions of the order of the Collect in that behalf.

(6). It should have been held that the clause with respect to inalienability was added unauthorisedly by the Mamlatdar in the ma -gin of the agreement without taking the previous consent of the Collector.

(7). The provisions of Rule 74(B) and Rule 37(3) and (4) of the Land Revenue Rule 1929, have been misconstrued and their effe on the plaintiff's case has been misconceived by the Lower Court.

(8). The very fact that form I(1) is prescribed when the land is granted both on impartible and inalienable tenure, and the For used in the

Form used in the present case was Form F(1) which relates only to impartible tenure and the clause of inalienability is added to it in hand subsequently, showed that the said addition is unauthorised.

(9). If the Collector's orders were that the land was granted both under impartible and inalienable tenure th form I(1) prescribed for such a case would have been used.

-(10). It ought to have been held that there was no basis for holding that "new" tenure meant restricted or inalienable tenure.

(11). It was an error to proceed on the assumption that as there was no law or rule to explain the word "new tenure" and therefore the additional clause was in corporated in the margin by way of explanation in the agreement deed.

(12). If "new tenure" meant inalienable and the grant was under a "new and impartible tenure" the Form I(1) was the proper form and th was no need to improvise the present form of agreement.

(13). It should have been held that the explanation for the insertion of the additional clause is an after thought to justify the unauthorised action.

(14). It should have been held that in the absence of any authority the term "new tenure" was used only in contradiction to the "old tenure" and nothing more.

(15). If what was meant by "new tenure" was that the lands were inalienable, there was no need to use such an ambiguous expression as that when the more commonly know and accepted term "inalienable" itself was available.

(16). It ought to have been held that the plaintiff had entered into the agreement under a misconception that the terms therein were inserted in the order of the Collector and that the order of the Collector did not include a condition against inalienability and that therefore the plaintiff was not bound by it.

(17). It should have been held that the Collector's order refusing to give permission to the plaintiff to sell the lands was ultra vires.

(18). Even assuming that the plaintiff had consented to the term of inalienability, it ought to have been held that he had done so, on the understanding that he was doing it subject to the policy of the Government as set out in the various Government Resolutions which were in force then and that therefore, the plaintiff could not have been subjected

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subjected to the implications of the said condition agaonst alien -tion to an extent which was more disadvantageous than it was whe he entered into the agreement.

(19). It was an error to hold that the Government Resolution then in existence said nothing about the conditions on which the permission to sell could be given.

(20). The discretion having been given to the Collector it was wrong x on his part to have refused to use it himself or to have surrendered the same to the Government. The Collector's orders in pursuance of the G.R. are therefore ultra vires.

(21). It was clearly an error x on the part of the Lower Cour to have held that the Collector's order passed in accordance with the Government Resolution was an order passed by the Collector in his own discretion.

(22). The application of the plaintiff for permission to sell the lands having been preferred along before the passing of the Government Resolution in question, it was wrong to have applied to the application of the Government Resolution passed subsequent -ly.

(23). The Collector was wrong in delaying the permission till after the passing of the Government Resolution of 1951.

(24). It was no fault of the plaintiff that the Revenue Auth -rities had taken an inordinately a long period of time in -- deciding the plaintiff's application. The Plaintiff could not hav been made to suffer for the inaction or slowness of the Revenue Authorities.

(25). The plaintiff having applied for permission on 12-9-1949, the application should have been decided on the footing of the conditions then existing

(26). It should have been held that the plantiff having specifically mentioned in the application for conversion of the Inam lands into Raitava lands that he wanted to convert them in order to sell them, and the Collector having granted such permi -ssion once and converted them into new and impartible tenure without demanding any occupancy price, it was not open to the Collector to demand 50% or any portion of the sale price before giving permission to sell.

(27). It should have been held that the condition imposed for granting permission to sell demanding 50% of the sale price was unreasonably, improper, unconscionable and expropriatory.

(28). It should have been held that in as much as the Government themselves had by their G.R.No.2451/49-IV dated 18th August 1953 subsequently brought this Nazarana in similar cases to 20 times the assessment the demand of 50% of the sale price in 1951 was on the face of it unreasonable, unconscionable and expropriate.

(29). It ought to have been held that the Collector and the Government of Bombay had acted in excess of their rights under the contract by imposing unreasonable conditions which were expropriatory in their future and character.

(30). It was an error to hodlthat the Civil Court had no jurisdiction or power to declare the conditions unreasonable and unconcionable.

(31). It was quite within the power of the Civil Court to relieve the plaintiff from the burden of this unreasonable and unconcionable condition.

(32). In any case, the Lower Court should have directed the Government to apply to the present case the principle and the spirit underlying the G.R. of 1953.

(33). Proper and necessary issues were not raised and correct and legal inferences have not been drawn from proved facts.

(34). The appreciation of law bearing upon the question is faulty and the same has been misapplied to the facts of the case.

(35). The documents and pleadings have been misconstrued.

(36). The declaration prayed for ought to have been granted.

(37). The order as to costs is wrong.

Bombay,
2/12/1953. Sd/- N.M.Shanbhag.
P/- ADVOCATE FOR THE APPELLANT.

No. L.A.W. 209

Bijapur 20-1-1954.

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Civil Appeal No.605/53
in the High court of Bombay.

Venkatesh Shriniwas Deshpande
of Indi---- Appellant

Vs.

(1) The State of Bombay.

(2) The Collector of Bijapur.

Sir,

The appellant had filed a special Civil Suit No. 21/52 in the Court of the Civil Judge Senior Divison Bijapur. The defence of the Civil Suit was sanctioned as per G.R.L.D.No.10515-E dated 5-5-1953. The District Government Pleader Bijapur conducted the defence of th' suit and th Plaintiff's suit was dismissed. Hence he has preferred the above appeal to the High Court. The notice of the appeal has been served upon me and it is enclosed herewith.

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2. The appeal in question is to be defended on all the favourable grounds in the judgment of the lower court. I, therefore request you to move Government to sanction the defence of the appeal.

3. The Government Pleader in the High Court may be instructed to appear and defend the appeal.

For Collector, Bijapur.

Submitted

Sanction may be accorded for the deposit of LA no 605/53

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Suits:
Bijapur.
For a declaration that a clause alleged to have been unauthorisedly added to the agreement in Form F(1) signed by him, under which he is required to obtain the permission of the Collector for sale of the suit lands, was null and void, (2) for a declaration that orders contained in G.R.,R.D.,No.4119/49, dated the 22nd January 1951, and order passed by the Collector on 14th March 1951, refusing permission to the plaintiff to sell the suit lands are ultra vires the power of the Government and the Collector.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2567-E
Bombay Castle, 5th February 1954.

Read Government Resolution, Legal Department, No. 10515/E, dated the 5th May 1953.

Endorsement from the Government Pleader,High Court, Bombay No. 654, dated the 23rd January 1954, requesting Government's sanction to the defence of the first Appeal No. 605 of 1953, filed by the Plaintiff in the suit noted in the margin.

In the Court of the Civil Judge(Senior Division), Bijapur.	
Civil Suit No.21 of 1952.	
Venkatesh Shrinivas Deshpande .. Plaintiff; versus	
The State of Bombay and another. Defendants.	

RESOLUTION:- Sanction is accorded to the defence of First Appeal No.605 of 1953, in the High Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department,No.10515/E, dated the 5th May 1953, and the favourable grounds contained in the judgment of the Civil Judge,(Senior Division), Bijapur, dated the 23rd October 1953.

By order and in the name of the Governor of Bombay,

Original sd/- (R. T. KATARKI),
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

issued D/s 5/2

MMS.1.2.54.

Submitted for Signature
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D.S(Civil)

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No. LWL.3253
Bijapur, 15-7-1954.

From

Shri H.T.Sadhwani, I.A.S.,
Collector of Bijapur.

To

The Secretary to Government,
Revenue Department, Bombay.

Subject :- Lands : Bijapur
Indi.- permission to sell new tenure - at

Reference: Govt. E.R.D.No. 20400-B dated 13-3-1954 and
G.E.R.D.No. 0/36075(a)-B dated 6-5-1954.

Sir,

Shri L.S.Deshpande of Indi, Taluka Indi, has approached Government stating that his new tenure S.Nos. 198 of Bhuyar and S.No. 122 of Lingadalli (Taluka Ind) may be permitted to be sold on recovery of nazarana equal to 20 times assessment on the anology of the orders contained in G.R.R.D.No. 2451/49-III of 18-8-1953.

The above S.Nos. were originally Paragana Watan lands and they were regranted to the applicant on new and impartible tenure ~~to the applicant on new and impartible tenure~~ on their relinquishment under rule 74-A L.R.R. in the year 1950 i.e. before the enforcement of the provisions of the Bombay Paragana and Kulkarni Watans Abolition Act. The applicant subsequently requested for permission to sell these S.Nos. But this request had to be refused as he did not agree to pay 50% of the market value of the lands to Government as nazarana as required by Govt. orders then in force. Thereupon, he filed a civil suit against Government in the Court of the Civil Judge, Sr. Dn., Bijapur, for a declaration that the order of the Collector demanding 50% of the sale price as Nazarana was arbitrary etc. and the suit was dismissed. He has preferred an appeal to the High Court in this connection. The papers of the case have been sent to the R.L.A. Bombay for arranging to conduct the appeal under this office No. L.W.L.212 dated 20-1-1954.

In his application Shri Deshpande has stated that he would withdraw his appeal filed before the High Court provided he is permitted to sell these lands on recovery of nazarana as required by the G.R.R.D.No. 2451/49-III of 18-8-1953. The above orders are applicable only to those lands regranted under Sec. 4(of the Bombay Paragana and Kulkarni Watans Abolition Act. In the disposal of the applicant's petition dated 28-11-1953 to this office, it was considered that the orders contained in G.R.R.D. No. 7799/51 dated 29-9-1953 were not applicable to this case as the relinquished watan lands were regranted to the original holde on new and impartible tenure before the date of issue of these orders and without levy of any O.P. In para III of the said G.R. it is stated that the new tenure of the land regranted under clause (1) should be permitted to be converted into ordinary raya -wari tenure on recovery of nazarana @ (at concessional rates) and in the concluding para of the same G.R. it has been stated that these orders should not be given effect to retrospectively. In view of these directions, it was interpreted that the benefits of the G.R. of 29-9-1953 should be extended only to such cases in which the relinquished watan lands would be regranted to the original holder in pursuance of the orders contained in para (1) of the said G.R. As the lands in this case were regranted not in accordance with these orders, the applicant's request was accordingly refused. However, in a similar case in which watan lands were regranted on new tenure prior to 29-9-1953 and the regrant had occupant had applied for permission to convert the tenure into ordinary raiyatwari tenure after that date, Government orders have passed orders that the orders contained in the G.R.

dated 29-9-1953 should be followed (vide G.M.R.D.No. 2451/497/82107-M(Spl) dated 9-8-1954). Orders may kindly be passed whether in the case under reference the request of the applicant for conversion of his new tenure land into Ordinary Rayatwari tenure on payment of nazarana equal to 20 times the assessment may be granted.

The application and it's accompaniments are enclosed.

Yours faithfully,

Sd/- H.T. Sadhwani,

Collector, Bijapur.

Copy F.W.Cs. to the R.L.A., Bombay, in continuation of this Office letter No. LAW. 209 dt. 20-1-54.

L.D. 21 JUL 1954 Bijapur

Collector Bijapur

Submitted

Pl. see Collectors letter overleaf.

The letter may be forwarded to the Revenue Dept. for remarks

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The two communications dt. 9-8-54 and 29-8-54 are not traceable in the records

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File in S. Bijapur 9/53

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